

## ORDINANCE NO. 4437

### AN ORDINANCE PROHIBITING THE OPERATION OF MEDICAL MARIJUANA BUSINESSES AND AMENDING THE GRAND JUNCTION MUNICIPAL CODE BY THE ADDITION OF A NEW SECTION PROHIBITING CERTAIN USES RELATING TO MARIJUANA

#### RECITALS:

In November 2000 Colorado voters approved Amendment 20 (Article XVIII, section 14) to the Colorado Constitution. Amendment 20 concerns the possession and use of certain quantities of marijuana for the treatment of certain debilitating medical conditions.

In December 2009 the City Council as an exercise of its police powers pursuant to and in accordance with the City Charter and the authority granted it in Article XX of the Colorado Constitution adopted Ordinance No. 4392 which declared a twelve month moratorium on the licensing, permitting and operation of medical marijuana businesses in the City.

In June of 2010 Governor Ritter signed into law House Bill 10-1284 which among other things authorized the City to adopt an ordinance to license, regulate or prohibit the cultivation and/or sale of medical marijuana. C.R.S. 12-43.3-103(2). The law further allows the City to either by a majority of registered electors of the City voting at a regular election or a majority of the City Council to vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations and medical marijuana manufacturers.

On September 1, 2010 the City Council considered writing an ordinance to prohibit the operation of medical marijuana centers, optional premises cultivation operations and medical marijuana infused products manufacturers' in the City.

The City of Grand Junction, in the County of Mesa and State of Colorado (the "City"), is a home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter.

Under the Colorado Medical Marijuana Code, 12-43.3-101 C.R.S. *et. seq.* a political subdivision of the State may *inter alia* act to preclude the operation of medical marijuana businesses in a community. Pursuant to 12-43.3-106 C.R.S. a City, by a majority of the members of the governing body may vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations and medical marijuana infused products manufacturing.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

Title 5 of the Grand Junction Municipal Code is amended as follows. Amendments are shown in ALL CAPS (except section designations, which are shown in the actual case as they will appear in the Code).

Title 5 Article 14 Grand Junction Municipal Code

#### **5.14.010 MEDICAL MARIJUANA**

UNDER THE AUTHORITY GRANTED IN 12-43.3-101 ET. SEQ. C.R.S. AND THE CHARTER OF THE CITY OF GRAND JUNCTION THIS ORDINANCE IS ADOPTED BY THE CITY COUNCIL AND PROHIBITS CERTAIN BUSINESS AND LAND USES RELATED TO MEDICAL MARIJUANA IN THE CITY AND IN FURTHERANCE OF ITS STATED INTENT, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS.

THE COLORADO MEDICAL MARIJUANA CODE 12-43-101 ET. SEQ. AUTHORIZES A REGULATORY STRUCTURE FOR THE RETAIL, SALE, DISTRIBUTION, CULTIVATION AND DISPENSING OF MEDICAL MARIJUANA, MARIJUANA INFUSED PRODUCTS AND OPTIONAL PREMISES CULTIVATION. THROUGH THAT REGULATORY STRUCTURE THE SCOPE AND AUTHORITY OF AMENDMENT 20 TO THE COLORADO CONSTITUTION IS FURTHER DEFINED.

THE COLORADO MEDICAL MARIJUANA CODE ALSO SPECIFICALLY AUTHORIZES THE GOVERNING BODY OF A MUNICIPALITY TO VOTE TO PROHIBIT THE LICENSURE AND/OR OPERATION OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA INFUSED PRODUCTS MANUFACTURING WITHIN THE MUNICIPALITY.

THE COLORADO MEDICAL MARIJUANA CODE ALSO SPECIFICALLY AUTHORIZES A MUNICIPALITY TO PROHIBIT THE OPERATION OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA INFUSED PRODUCTS MANUFACTURERS' LICENSES BASED ON LOCAL GOVERNMENT ZONING, HEALTH, SAFETY AND PUBLIC WELFARE LAWS FOR THE DISTRIBUTION OF MEDICAL MARIJUANA.

AFTER DUE AND CAREFUL CONSIDERATION OF THE COLORADO MEDICAL MARIJUANA CODE, ARTICLE XVIII OF THE COLORADO CONSTITUTION, THE CONTROLLED SUBSTANCE ACT (21 U.S.C. 811), THE COLORADO UNIFORM CONTROLLED SUBSTANCES ACT (18-18-101 C.R.S. ET. SEQ.) AND THE REAL AND POSSIBLE EFFECTS OF CULTIVATION AND DISPENSING OF MARIJUANA AND/OR THE MANUFACTURING AND SALE OF MARIJUANA INFUSED PRODUCTS, THOSE BUSINESSES, OPERATIONS AND LAND USES HAVE BEEN FOUND TO ADVERSELY AFFECT THE HEALTH, SAFETY AND WELFARE OF THE CITY AND ITS INHABITANTS.

THEREFORE IT IS AND SHALL BE UPON PASSAGE OF THIS ORDINANCE UNLAWFUL FOR ANY PERSON TO OPERATE, CAUSE TO BE OPERATED OR PERMIT TO BE OPERATED A MEDICAL MARIJUANA CENTER, AN OPTIONAL PREMISES CULTIVATION OPERATION OR A MEDICAL MARIJUANA INFUSED PRODUCTS MANUFACTURING OR SALE FACILITY, BUSINESS OR OPERATION

RELATED THERETO IN THE CITY AND NO CITY LICENSES SHALL ISSUE FOR THE SAME.

#### **5.14.011 DEFINITIONS**

ALL DEFINITIONS PROVIDED IN 12-43.3-101 ET. SEQ. C.R.S. ARE ADOPTED HEREIN UNLESS SPECIFICALLY AMENDED HEREBY.

“MARIJUANA” SHALL HAVE THE SAME MEANING AS THE TERM “USABLE FORM OF MARIJUANA” AS SET FORTH IN ARTICLE XVIII, SEC. 14(1)(I) OF THE COLORADO CONSTITUTION OR AS MAY BE MORE FULLY DEFINED IN ANY APPLICABLE STATE LAW OR REGULATION. “MARIJUANA” MAY ALTERNATIVELY BE SPELLED “MARIHUANA.”

“MEDICAL MARIJUANA” MEANS MARIJUANA THAT IS GROWN AND SOLD PURSUANT TO THE PROVISIONS OF 12-43.3-101 ET. SEQ. C.R.S. AND FOR A PURPOSE AUTHORIZED BY ARTICLE XVIII, SEC. 14 OF THE COLORADO CONSTITUTION.

“MEDICAL MARIJUANA CENTER” MEANS ANY PERSON LICENSED PURSUANT TO 12-43.3-101 ET. SEQ. C.R.S. WHO SELLS MARIJUANA IN ANY FORM TO REGISTERED PATIENTS OR TO A PRIMARY CAREGIVER(S) AS DEFINED IN ARTICLE XVIII, SEC. 14 OF THE COLORADO CONSTITUTION, EXCEPT, HOWEVER, A PRIMARY CAREGIVER AS DEFINED HEREIN SHALL NOT BE CONSIDERED A MEDICAL MARIJUANA CENTER.

“MEDICAL MARIJUANA INFUSED PRODUCT” MEANS ANY PRODUCT INFUSED WITH OR CONTAINING MARIJUANA THAT IS INTENDED FOR USE OR CONSUMPTION OTHER THAN BY SMOKING, INCLUDING EDIBLE PRODUCTS, OINTMENTS AND TINCTURES.

“MEDICAL MARIJUANA INFUSED PRODUCT MANUFACTURER” MEANS A PERSON LICENSED PURSUANT TO 12-43.3-101 ET. SEQ. C.R.S. TO OPERATE A BUSINESS AS DESCRIBED IN 12-43.3-404 C.R.S.

“MEDICAL USE” SHALL HAVE THE SAME MEANING AS IS SET FORTH IN ARTICLE XVIII, SEC. 14(1)(B) OF THE COLORADO CONSTITUTION, OR AS MAY BE MORE FULLY DEFINED IN ANY APPLICABLE STATE LAW OR REGULATION.

“OPTIONAL PREMISES CULTIVATION OPERATION” MEANS A PERSON LICENSED PURSUANT TO 12-43.3-101 ET. SEQ. C.R.S. TO GROW AND CULTIVATE MARIJUANA FOR A PURPOSE AUTHORIZED BY ARTICLE XVIII, SEC. 14 OF THE COLORADO CONSTITUTION.

“PATIENT” HAS THE SAME MEANING AS SET FORTH IN ARTICLE XVIII, SEC. 14(1)(C) OF THE COLORADO CONSTITUTION.

“PERSON” SHALL MEAN A NATURAL PERSON, PARTNERSHIP, ASSOCIATION, COMPANY, CORPORATION, LIMITED LIABILITY COMPANY OR OTHER

ORGANIZATION OR ENTITY OR A MANAGER, AGENT, OWNER, OFFICER OR EMPLOYEE THEREOF.

“POSSESS OR POSSESSION” MEANS HAVING PHYSICAL CONTROL OF AN OBJECT, OR CONTROL OF THE PREMISES IN WHICH AN OBJECT IS LOCATED, OR HAVING THE POWER AND INTENT TO CONTROL AN OBJECT, WITHOUT REGARD TO WHETHER THE ONE IN POSSESSION HAS OWNERSHIP OF THE OBJECT. POSSESSION MAY BE HELD BY MORE THAN ONE PERSON AT A TIME. USE OF THE OBJECT IS NOT REQUIRED FOR POSSESSION.

“PRIMARY CAREGIVER” HAS THE MEANING SET FORTH IN ARTICLE XVIII, SEC.14(1)(F) OF THE COLORADO CONSTITUTION AND AS THE SAME MAY BE CLARIFIED OR CONSTRUED BY 12-43.3-101 ET. SEQ. C.R.S.

“PRODUCE OR PRODUCTION” MEANS (I) ALL PHASES OF GROWTH OF MARIJUANA FROM SEED TO HARVEST, (II) COMBINING MARIJUANA WITH ANY OTHER SUBSTANCE FOR DISTRIBUTION, INCLUDING STORAGE AND PACKAGING FOR RESALE, OR (III) PREPARING, COMPOUNDING, PROCESSING, ENCAPSULATING, PACKING OR REPACKAGING, LABELING OR RE-LABELING OF MARIJUANA OR ITS DERIVATIVES WHETHER ALONE OR MIXED WITH ANY AMOUNT OF ANY OTHER SUBSTANCE.

#### **5.14.012 APPLICABILITY AND EFFECTIVE DATE**

THIS ARTICLE SHALL APPLY TO ALL PROPERTY AND PERSONS WITHIN THE CITY OF GRAND JUNCTION.

IT SHALL BE UNLAWFUL AND A VIOLATION UNDER THIS CHAPTER FOR A PERSON TO ESTABLISH, OPERATE, CAUSE OR PERMIT TO BE OPERATED, OR CONTINUE TO OPERATE WITHIN THE CITY AND WITHIN ANY AREA ANNEXED TO THE CITY AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, A MEDICAL MARIJUANA CENTER, A MEDICAL MARIJUANA INFUSED PRODUCT MANUFACTURING FACILITY, AN OPTIONAL PREMISES CULTIVATION OPERATION, OR ANY BUSINESS, FACILITY OR ANY OTHER OPERATION REQUIRING A LICENSE UNDER 12-43.3-101 ET. SEQ. C.R.S.

THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE JANUARY 1, 2011.

THE MORATORIUM ON COMMERCIAL MEDICAL MARIJUANA CENTERS AND FACILITIES IMPOSED BY ORDINANCE NO. 4392 IS HEREBY EXTENDED THROUGH DECEMBER 31, 2010.

#### **5.14.013 PATIENTS AND PRIMARY CAREGIVERS**

NOTHING IN THIS CHAPTER SHALL PROHIBIT, REGULATE OR OTHERWISE IMPAIR OR BE CONSTRUED TO PROHIBIT, REGULATE OR IMPAIR THE CULTIVATION, USE OR POSSESSION OF MEDICAL MARIJUANA BY A PATIENT AND/OR BY A PRIMARY CAREGIVER FOR HIS/HER PATIENTS PROVIDED THAT SUCH PATIENT OR PRIMARY CAREGIVER IS ACTING IN ACCORDANCE WITH ALL

APPLICABLE PROVISIONS OF ARTICLE XVIII, SEC. 14(1)(C) OF THE COLORADO CONSTITUTION, 12-43.3-101 ET. SEQ. C.R.S. AS AMENDED, 25-1.5-106 C.R.S. AS AMENDED, THE REGULATIONS PROMULGATED BY THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE DEPARTMENT OF REVENUE OR ANY OTHER AGENCY WITH REGULATORY AUTHORITY AND THE LAWS OF THE CITY.

#### **5.14.014 PENALTY**

A VIOLATION OF ANY PROVISION OF THIS CHAPTER SHALL CONSTITUTE A MISDEMEANOR OFFENSE PUNISHABLE IN ACCORDANCE WITH SECTION 1.04.090 OF THE GRAND JUNCTION MUNICIPAL CODE. A PERSON COMMITTING A VIOLATION SHALL BE GUILTY OF A SEPARATE OFFENSE FOR EACH AND EVERY DAY DURING WHICH THE OFFENSE IS COMMITTED OR CONTINUED TO BE PERMITTED BY SUCH PERSON AND SHALL BE PUNISHED ACCORDINGLY.

#### **5.14.015 SEVERABILITY**

THIS ORDINANCE IS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF THE CITY AND COVERS MATTERS OF LOCAL CONCERN OR MATTERS OF MIXED STATE AND LOCAL CONCERN AS PROVIDED BY 12-43.3-101 C.R.S.

IF ANY PROVISION OF THIS ORDINANCE IS FOUND TO BE UNCONSTITUTIONAL OR ILLEGAL, SUCH FINDING SHALL ONLY INVALIDATE THAT PART OR PORTION FOUND TO VIOLATE THE LAW. ALL OTHER PROVISIONS SHALL BE DEEMED SEVERED OR SEVERABLE AND SHALL CONTINUE IN FULL FORCE AND EFFECT.

All other provisions of Title 5 of the Grand Junction Municipal Code shall remain in full force and effect.

In addition, Section 21.04.040(g)(5) of the Grand Junction Municipal Code (also known as the Zoning and Development Code) is hereby amended to include a new subsection (v) as follows: (amendments are shown in ALL CAPS except section designations, which are shown in the actual case as they will appear in the Code).

(v) MEDICAL MARIJUANA CULTIVATION BY A PATIENT OR PRIMARY CAREGIVER, PROVIDED, HOWEVER, THAT:

(A) THERE SHALL NOT BE MORE THAN ONE PRIMARY CAREGIVER PER DWELLING UNIT GROWING, STORING OR PROVIDING MEDICAL MARIJUANA IN ANY FORM TO HIS/HER PATIENTS, AND

(B) SUCH GROWING, STORING OR PROVIDING OF MEDICAL MARIJUANA IS CONDUCTED IN ACCORDANCE WITH ARTICLE XVIII, SECTION 14 OF THE COLORADO CONSTITUTION AND 25-1.5-106 C.R.S. AS AMENDED, AND

(C) THE PRIMARY CAREGIVER SHALL HAVE NOT MORE THAN SIX PLANTS PER PATIENT WITH A MAXIMUM OF 30 PLANTS FOR FIVE PATIENTS BEING GROWN ON THE PREMISES OF THE DWELLING UNIT AT ANY GIVEN TIME, AND

(D) ACCESSORY BUILDINGS SUCH AS DETACHED GARAGE, SHED, GREEN HOUSE OR OTHER STRUCTURE USED FOR GROWING, STORING OR PROVIDING MEDICAL MARIJUANA MUST COMPLY WITH ALL ZONING BULK STANDARDS AND BUILDING AND FIRE CODE PROVISIONS APPLICABLE THERETO.

All other provisions of Section 21.04.040(g)(5) shall remain in full force and effect.

Introduced on first reading and ordered published this 13<sup>th</sup> day of September, 2010.

PASSED and ADOPTED this 4<sup>th</sup> day of October, 2010.

/s/: Teresa A. Coons  
President of the Council

ATTEST:

/s/: Stephanie Tuin  
City Clerk